



NORTHWEST
Ecosystem Services

October 19, 2009

Kim W. Kratz, Ph.D.
Director, Oregon State Habitat Office
Habitat Conservation Division
National Marine Fisheries Service
1201 NE Lloyd Boulevard, Suite 1100
Portland, OR 97232-1274

Dear Mr. Kratz:

Thank you for your letter on October 9, 2009, regarding the ZRZ Realty Company remedial action project on the Willamette River. We differ on some of the recommendations in your letter, and would like an opportunity to clarify our intended approach and the technical basis for it as we complete our biological assessment and prepare for the consultation with the NMFS and the U.S. Army Corps of Engineers.

At the outset, ZRZ wishes to acknowledge the goal of the City of Portland and your agency to pursue a significant habitat restoration program in the Lower Willamette, including in the vicinity of our project. The recent conceptual proposals of the Bureau of Environmental Services (BES) outline its preliminary thoughts on one approach to a restoration program in the area of our project, and we will continue with our discussions of those concepts with BES, and others, and with the NMFS.

However, as you know, ZRZ has worked for the past 15 years with the Oregon Department of Environmental Quality to identify how best to remediate the contamination at our site with the goal of protecting human health and the environment. An important component of this effort is to improve the functioning of the aquatic system in the area of our project by eliminating the on-going contamination of the area from residual contaminants. We believe this is a good thing from an environmental perspective, a good thing for listed species and the Willamette, and one that will contribute to the long-term aquatic productivity of the site.

Your letter poses a general question about whether the effects of our project “adequately address the habitat needs of salmon and steelhead”, and then provides several recommendations for us, two of which would fundamentally alter our proposal and result in increased environmental risk, very steep increased costs, and a less sustainable project. It is by no means clear to us how these recommendations comport with the Endangered Species Act regulatory requirements governing the adequacy of our proposal under section 7, which are directed to avoiding activities that would jeopardize listed species or adversely modifying

designated critical habitat while retaining an adequate potential for recovery. We believe that the improvements that will result from our project satisfy these objectives in light of the substantial and documented improvements to aquatic functions and value that will result from the remediation of the site.

Included with this letter is a draft table from the ZRZ Biological Assessment, summarizing existing environmental baseline conditions at the site, and potential effects of the proposed action. The table includes an evaluation of baseline conditions and potential effects relative to primary constituent elements (PCEs) for the listed salmonid ESUs. As you can see, our evaluation shows that the proposed action improves or maintains PCEs that are at risk or not properly functioning.

ZRZ understands the aspirations of the NMFS and the City regarding habitat restoration in the Lower Willamette, and we are willing to consider such proposals for ZRZ property should funding by other parties become available in a timely manner. However, the immediate task at hand is the timely implementation of an approved remediation design that complies with the consent judgment. We are confident that through thorough review and focused discussion of our remediation design we can complete this project, thereby protecting listed fish and improving critical habitat in this reach of the Willamette River.

We look forward to continuing coordination and discussion of the ZRZ project with your staff, leading to a successful ESA consultation. We are very interested in sharing with you and the Corps the results of our biological assessment, which evaluates in greater detail the effects of our project on listed species and their habitats and which ought to help us advance the consultation substantially. We appreciate the time, effort, and thoughtful review by Ben Meyer and Christy Fellas on this complex project.

I will phone you very soon to schedule a meeting between NMFS and ZRZ to discuss the items raised in this exchange of letters. I look forward to clarifying our requirements under the ESA, and moving forward into consultation.

Sincerely,

Paul A. Fishman
ZRZ Waterfront Remediation Project Manager

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ZRZ Team